IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 387 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)

Versus

KANABHAI BHOLABHAI - Respondent(s)

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Appearance :

MR PRADIP BHATE AGP for Petitioner(s) : 1 - 2.
MR RC KAKKAD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

1. In the present petition, the State Government has challenged the legality of an award dated 9th March, 1999 passed by Labour Court, Bhavnagar. By the impugned award

the Labour Court was pleased to set aside the termination of the respondent workman dated 12th May, 1984 he was directed to be reinstated in the service with full back wages. Learned advocate Mr. Kakkad appearing for the respondent workman stated that during the pendency of the petition respondent was reinstated in service w.e.f 23rd September, 1999. He also stated that the respondent was superannuated on crossing 58 years of age w.e.f. 30th September, 2001.

2. The respondent workman was engaged as a Chokidar by the petitioners. While he was working in the said capacity as a work charged employee it came to the notice of the employers that the workman is involved in large number of criminal offences. In the past he was facing charges for having committed extortion and robberies and on number of occasions he was externed also by the competent authority. The petitioners, therefore, terminated his services w.e.f. 12.5.1984. The respondent challenged his termination by raising a reference in the year 1990. While allowing the reference by the impugned award the Labour Court did take notice of the criminal activities of the respondent and his involvement in such activities in the past. The Labour Court, however,

ignored these facts and the police record which was also produced by observing that in the past whatever criminal action has been taken such chapters are closed and the workman cannot be punished twice for the same offence. Relying on Article 20 of the Constitution of India, the Labour Court observed that terminating the workman on the basis of police report would amount to double jeopardy. The Labour Court, therefore, directed reinstatement of workman with full back wages.

3. The award of the Labour Court cannot be sustained. To begin with, the reference was raised six years after the termination, ignoring this, the Labour Court granted full back wages upon setting aside the termination. The police record of the workman was very much available before the Labour Court which revealed that the workman was involved in large number of criminal cases and was externed on more occasions than one in the past. The respondent was engaged as work charged Chokidar is also a factor which the Labour Court did not properly appreciate. The observations of the Labour Court that having once been punished for the criminal offence the same cannot be utilized to terminate the services of the workman in view of the provisions of Article 20 of the

Constitution of India cannot be sustained. When the workman was discharging duties as a guard his uprightness and integrity were absolutely essential. When he himself is involved in large number of criminal cases including extortion and robbery, the petitioners cannot be expected to retain such a person as a Chokidar. In the result, the award of the Labour Court cannot be upheld, the same is set aside. Petition is allowed. Rule is made absolute. No order as to costs. Record and proceedings received by this Court to be returned back to the Labour Court.

(Akil Kureshi, J.)

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